

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

EDWARD E. GILLEN CO.,

Plaintiff,

Case No. 10-C-564

-vs-

**THE INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA,**

Defendant.

DECISION AND ORDER

After a series of rulings, the only parties left in this case are the plaintiff, Edward E. Gillen Company (“Gillen”), and its excess liability insurer, The Insurance Company of the State of Pennsylvania (“ICSOP”). Gillen is attempting to recover the balance of a \$2 million dollar arbitration award from ICSOP after Gillen’s primary liability insurer paid its policy limit of one million dollars. On January 31, the Court held a telephonic scheduling conference. During the conference, ICSOP argued it should be entitled to conduct discovery. Gillen disagrees. The Court ordered further briefing on the issue, which is now completed.

After considering the arguments at the scheduling conference and then reviewing the briefs of the parties, the Court is inclined to agree that this matter can probably be resolved without discovery. Gillen has indicated its intention to file a motion for summary judgment in short order. A party can move for summary judgment at any time, not just at the close of discovery, so the Court does not view this procedure as being prejudicial to ICSOP. Fed. R.

Civ. P. 56(b); *Eastland Music Group, LLC v. Lionsgate Entm't, Inc.*, 707 F.3d 869, 870 (7th Cir. 2013). In response, ICSOP can always make an appropriate motion for discovery under Federal Rule of Civil Procedure 56(d) if it "cannot present facts essential to justify its opposition."

IT IS HEREBY ORDERED THAT Gillen's motion to limit discovery [ECF No. 153] is **GRANTED**. Gillen's motion for summary judgment should be filed on or before **April 26, 2013**. Briefing will proceed according to the local rules.

Dated at Milwaukee, Wisconsin, this 28th day of March, 2013.

BY THE COURT:



HON. RUDOLPH T. RANDA
U.S. District Judge